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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,405	07/07/2003	Michael Houck	33325	5898

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EXAMINER

AVILA, STEPHEN P

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/614,405

Applicant(s)

HOUCK, MICHAEL

Examiner

Stephen Avila

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27 and 30 is/are allowed.
- 6) ☒ Claim(s) 1,2,6-16,18,20-26,28,29 and 32-40 is/are rejected.
- 7) ☒ Claim(s) 3-5,17,19 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 100603.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 39 and 40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Evans. Evans discloses the claimed subject matter including a swim fin 20, with a foot portion 22, a web portion 78 (note Figures 4, 5, for example) with a web 82, supports 80 and connectors (note Figures 2, 3).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 6, 8-16, 20-26, and 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Ersoy et al. Evans does not disclose bosses. Ersoy et al teach a boss connection 4. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the connection of Evans to include a boss as taught by Ersoy et al for a device with a small number of parts, is easy to manually assemble, is inexpensive, and has a long life.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of Ersoy et al as applied to claim 1 above, and further in view of Tomlinson. Evans does not disclose support hinges. Tomlinson teaches support hinges (at 30). It would

have been obvious to a person of ordinary skill in the art at the time the invention was made to form the supports of Evans with hinges as taught by Tomlinson for range of use of the device.

6. Claims 18, 26, 28, 29, 37 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims have no antecedent basis in the claims for their limitations or reclaim the same limitations contained in the parent claims thereof. It appears that claims 14-17 and 19-26 should depend from claim 13, instead of claim 12; claims 28, 29, and 31-38 should depend from claim 27, instead of claim 25.

7. Claims 3-5, 17, 19, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 27 and 30 are allowed.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ganev shows a fin. Semela shows a fin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Avila whose telephone number is 703-308-2578. The examiner can normally be reached on Monday to Thursday from 8 AM to 4 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen Avila  
Primary Examiner  
Art Unit 3617

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*Avila*  
*4/12/04*